

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JIMMIE LEWIS,)	
)	
Plaintiff,)	C.A. No.: 04-1350 (GMS)
)	
v.)	
)	
DR. SYLVIA FOSTER, STAFF)	
MEMBERS, THE DELAWARE)	
PSYCHIATRIC CENTER and)	
MR. GREY,)	
)	
Defendants.)	

MOTION TO DISMISS FOR LACK OF JURISDICTION

COMES NOW, Dr. Sylvia Foster, M.D., by and through her counsel, and moves this Honorable Court, pursuant to Federal Rules of Civil Procedure 12(b), to dismiss for lack of subject matter jurisdiction and in support thereof, avers the following:

1. Plaintiff Jimmie Lewis filed a claim, under 28 U.S.C §1915(a), on March 8, 2005 against Dr. Sylvia Foster and listed as additional Defendants is “Staff Members”. See a copy of Plaintiff’s Complaint attached hereto as Exhibit “A”.

2. Other than Dr. Sylvia Foster, the only Delaware Psychiatric Center staff persons mentioned in Plaintiff’s Complaint are Nurse Helen (last name not given); Mr. Grey; Nurse Karen Chamberlin and Dianne Stachowski. Plaintiff also references four or five staff members who were not named.

3. There is no federal question presented since Plaintiff is seeking monetary damages in the amount of \$20 million for pain and suffering. The other relief requested by Plaintiff was “notify the Superior Court that Dr. Sylvia Foster’s report cannot be relied on by the doctor herself”.

4. Plaintiff has raised no issues in his pleadings based on his imprisonment or which can even arguably be construed as a Section 1983 Complaint.

5. Under Federal Rules whenever it appears by suggestion of the party or otherwise that the Court lacks jurisdiction of the subject matter, the court shall dismiss the action. Federal Rules of Civil Procedure 12(h)(3). See also Trent Realty Assoc. v. First Federal Savings and Loan Assoc., 657 F.2d 29, 36 (3rd Cir. 1981).

6. While the alleged amount in controversy is obviously over the sum or value of \$75,000, Plaintiff has failed to show the requisite diversity of citizenship of the parties. In order for the Court to invoke its jurisdiction based on 28 U.S. C. §1323, diversity must be complete. No assertions have been made by the Plaintiff in regards to the residence of any party to this action. Even assuming that Mr. Lewis is attempting to proceed against Dr. Foster and Mr. Grey only as Defendants, the parties' residency has not been established by Plaintiff's pleadings.

7. Since Plaintiff has failed to plead the requisite facts to determine whether the Court has jurisdiction over diversity citizenship the matter should be dismissed pursuant to District Court Rules Chapter 85, §1332(a) and Federal Rules of Civil Procedure 12.

WHEREFORE, for the foregoing reasons Defendant Sylvia Foster, M.D. requests that this Court dismiss this claim with prejudice.

REGER RIZZO KAVULICH & DARNALL, LLP

/s/ Cynthia G. Beam, Esquire
Cynthia G. Beam, Esquire
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Wilmington, DE 19801
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Attorney for Defendant Dr. Sylvia Foster

Dated: June 17, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JIMMIE LEWIS,)	
)	
Plaintiff,)	C.A. No.: 04-1350 (GMS)
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DR. SYLVIA FOSTER, STAFF)	
MEMBERS, THE DELAWARE)	
PSYCHIATRIC CENTER and)	
MR. GREY,)	
)	
Defendants.)	

ORDER

AND NOW, TO WIT, this ____ day of _____, 2005, having considered Defendant Dr. Sylvia Foster's Motion to Dismiss for Lack of Jurisdiction, and the Response thereto, if any:

IT IS HEREBY ORDERED that Defendant Dr. Sylvia Foster's Motion to Dismiss for Lack of Jurisdiction has been GRANTED and the above-captioned action is dismissed with prejudice.

BY THE COURT:

The Honorable Gregory M. Sleet

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FOR THE DISTRICT OF DELAWARE

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Plaintiff,)	C.A. No.: 04-1350 (GMS)
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DR. SYLVIA FOSTER, STAFF)	
MEMBERS, THE DELAWARE)	
PSYCHIATRIC CENTER and)	
MR. GREY,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify on this 17th day of June, 2005 that two true and correct copies of Defendant Dr. Sylvia Foster's Motion to Dismiss for Lack of Jurisdiction have been served by first class mail, postage prepaid, to the following:

Jimmie Lewis
SBI#506622
H.R.Y.C.I.
P.O. Box 9561
Wilmington, DE 19809

REGER RIZZO KAVULICH & DARNALL, LLP

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